REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed April 22, 2005 (Paper No. 20050413). Upon entry of this response, claims 1-46 are pending in the application. In this response, claims 1, 11, 20, 28, and 29 have been amended. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 1-7, 9-17, and 19 under 35 U.S.C. §103

Claims 1-7, 9-17, and 19 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (U.S. 6,157,377) in view of *Gell* (U.S. 5,802,502). Applicant respectfully traverses the rejection of claims 1-7, 9-17, and 19. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/ features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 1 and 11

1) The proposed combination does not disclose, teach, or suggest "receiving bandwidth allocation information from a bandwidth allocation manager, the bandwidth allocation information related to an amount of bandwidth divided between a first service and a second service provided by the digital broadband delivery system to a plurality of digital home communication terminals"

Shah-Nazaroff et al. describes a "method and apparatus for purchasing media features for programming transmissions." (Abstract.) A user is presented with a list of video programs from multiple transmission sources such as cable, satellite, and Internet. (Col. 3, lines 10-40.) The

user can choose a "media upgrade feature" to receive the video program with a higher video resolution and/or a better quality audio track. (Col. 2, lines 20-50.)

Shah-Nazaroff et al. also teaches that higher resolution video or better quality audio uses more bandwidth, and that the user may therefore be charged a higher price. However, this general statement about the amount of bandwidth is required by particular features is not equivalent to the features recited in claims 1 and 11. Specifically, *Shah-Nazaroff et al.* does not disclose receiving bandwidth allocation data, or a bandwidth allocation manager. Thus, *Shah-Nazaroff et al.* fails to disclose, teach, or suggest every element of Applicant's claimed invention.

Gell discloses a system for selecting among multiple service providers based on price, promised quality of service, and observed past quality of service. (Abstract; Col. 5, line 55 to Col. 6, line 15.) A video-on-demand service provider includes a pricing station 900 at which generates an estimated price for a video-on-demand service as well as a quality of service (QOS) associated with that price. (Col. 12, lines 50-60). Database station 905 aggregates price and quality data from multiple service providers, and provides the aggregated data to the customer equipment 900. A selection circuit 912 in customer equipment 900 selects the lowest price after taking into account quality data. (Col. 13, lines 1-10.)

The Office Action alleges that "bandwidth allocation is the QOS settings." (Office Action, p. 3, first paragraph). Applicant respectfully submits that the QOS settings in *Gell* do not correspond to the bandwidth allocation information in amended claims 1 and 11, for at least the following reasons. Amended claims 1 and 11 describe the bandwidth allocation information as "an amount of bandwidth divided between a first service and a second service provided by the digital broadband delivery system to a plurality of digital home communication terminals." *Gell* merely discloses receiving quality-of-service data for a particular VoD program provided by a

particular provider. However, this quality-of-service data for one program is not related to bandwidth divided between a first service and a second service.

Accordingly, the proposed combination of *Shah-Nazaroff et al.* in view of *Gell* does not teach at least the above-described features recited in amended claims 1 and 11. Therefore, Applicant respectfully submits that amended claims 1 and 11 overcome the rejection, and requests that the rejection be withdrawn.

> 2) The proposed combination does not disclose, teach, or suggest "dynamically assigning a price criterion to each of a group of viewing options for a video program, each viewing option associated with a content delivery mode, the assignment based at least in part on the bandwidth allocation information"

Gell describes a system where a pricing station 900 assigns a price to a particular video-on-demand program. (Col. 12, lines 50-60). However, as discussed above, the assigned price is not based on bandwidth allocation information, as that information is defined in amended claims 1 and 11. Furthermore, *Gell* does not disclose assigning a price criterion to multiple viewing options each associated with a content delivery mode.

The Office Action admits that *Shah-Nazaroff et al.* fails to disclose "dynamically assigning a price criterion to each of a group of viewing options for a video program, each viewing option associated with a content delivery mode." Applicant further submits that since *Shah-Nazaroff et al.* does not disclose bandwidth allocation information, *Shah-Nazaroff et al.* also fails to disclose the feature of "the assignment based at least in part on the bandwidth allocation information."

Accordingly, the proposed combination of *Shah-Nazaroff et al.* in view of *Gell* does not teach at least the above-described features recited in amended claims 1 and 11. Therefore, Applicant respectfully submits that amended claims 1 and 11 overcome the rejection, and requests that the rejection be withdrawn.

b. Claims 2-7, 9-10, 12-17, and 19

Since claims 1 and 11 are allowable, Applicant respectfully submits that claims 2-7, 9-10, 12-17, and 19 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-7, 9-10, 12-17, and 19 be withdrawn.

2. Rejection of Claims 20-26 and 28-44 under 35 U.S.C. §103

Claims 20-26 and 28-44 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (U.S. 6,157,377) in view of *Gell* (U.S. 5,802,502) and further in view of *Son* (U.S. 6,697,376). Applicant respectfully traverses these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/ features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 20 and 29

1) The proposed combination does not disclose, teach, or suggest "a bandwidth allocation manager that determines a bandwidth allocation schedule by dynamically assigning one of a plurality of content delivery modes to each of a plurality of digital transmission channels for each of a plurality of time periods"

Shah-Nazaroff et al. does not disclose determining "a bandwidth allocation schedule" for multiple time periods. *Shah-Nazaroff et al.* discloses that some "media upgrades" result in downloading a view-on-demand movie over a channel with fewer simultaneous broadcasts. Even assuming, arguendo, that this teaching corresponds to "dynamically assigning" a "content delivery mode" to multiple channels, there is no teaching or suggestion of making this

determination for multiple time periods. Thus, *Shah-Nazaroff et al.* fails to disclose, teach, or suggest every element of Applicant's claimed invention.

Furthermore, neither *Gell* nor *Son* discloses determining "a bandwidth allocation schedule" for multiple time periods. Accordingly, the proposed combination of *Shah-Nazaroff et al.* in view of *Gell* and further in view of *Son* does not teach at least the above-described features recited in amended claims 20 and 29. Therefore, Applicant respectfully submits that amended claims 20 and 29 overcome the rejection, and requests that the rejection be withdrawn.

b. Claims 21-26, 28, and 30-44

Since claims 20 and 29 are allowable, Applicants respectfully submit that claims 21-26, 28, and 30-44 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 21-26, 28, and 30-44 be withdrawn.

3. Rejection of Claims 8 and 18 under 35 U.S.C. §103

Claims 8 and 18 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (U.S. 6,157,377) in view of *Gell* (U.S. 5,802,502) and further in view of *Candelore* (U.S. 6,057,872). Applicant respectfully traverses these rejections. Since claims 1 and 11 are allowable, Applicant respectfully submits that claims 8 and 18 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 8 and 18 be withdrawn.

4. Rejection of Claim 27 under 35 U.S.C. §103

Claim 27 has been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (U.S. 6,157,377) in view of *Gell* (U.S. 5,802,502) and further in view of *Son* (U.S. 6,697,376) and *Candelore* (U.S. 6,057,872). Applicant respectfully traverses this rejection. Since claim 20 is allowable, Applicant respectfully submits that claim 27 is allowable for at least the reason that it depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 27 be withdrawn.

5. Rejection of Claims 45 and 46 under 35 U.S.C. §103

Claims 45 and 46 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (U.S. 6,157,377) in view of *Gell* (U.S. 5,802,502) and further in view of *Son* (U.S. 6,697,376) and *Arsenault* (U.S. 6,701,528). Applicant respectfully traverses these rejections. Since claim 29 is allowable, Applicant respectfully submits that claims 45 and 46 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 45 and 46 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-46 be allowed to issue. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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